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## NOTICE OF ALLOWANCE AND FEE(S) DUE

24197 7590 06/28/2010

KLARQUIST SPARKMAN, LLP  
121 SW SALMON STREET  
SUITE 1600  
PORTLAND, OR 97204

EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1781

DATE MAILED: 06/28/2010

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,411	09/12/2003	Gary A. Snyder	6522-7833-01	6660

TITLE OF INVENTION: GRAPE FLAVORED POME FRUIT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$755	\$300	\$0	\$1055	09/28/2010

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

## HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER:** Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to:** Mail **Mail Stop ISSUE FEE**  
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**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

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24/97 7590 06/28/2010  
**KLARQUIST SPARKMAN, LLP**  
**121 SW SALMON STREET**  
**SUITE 1600**  
**PORTLAND, OR 97204**

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I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,411	09/12/2003	Gary A. Snyder	6522-78332-01	6660

TITLE OF INVENTION: GRAPE FLAVORED POME FRUIT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$755	\$300	\$0	\$1055	09/28/2010

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHAWLA, JYOTI	1781	426-534000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_  
 (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_  
 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee  
☐ Publication Fee (No small entity discount permitted)  
☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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10/661,411	09/12/2003	Gary A. Snyder	6522-78332-01	6660
24197	7590	06/28/2010	EXAMINER	
KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204			CHAWLA, JYOTI	
			ART UNIT	PAPER NUMBER
			1781	

DATE MAILED: 06/28/2010

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 294 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 294 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

**Notice of Allowability****Application No.**

10/661,411

**Applicant(s)**

SNYDER, GARY A.

**Examiner**

JYOTI CHAWLA

**Art Unit**

1781

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment and declaration dated 5/7/2010.
2. ☒ The allowed claim(s) is/are 15, 18, 20 and 21, renumbered as 1-4.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.  
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached  
1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.  
**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 5/7/2010
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1781

### **DETAILED ACTION**

Applicants' amendments to claims filed 5/7/2010 have been entered. Claim 15, 18, 20 and 21 has been amended and claims 16, 17, 19, 22-26 have been cancelled. Claims 15, 18, 20 and 21 are allowed.

#### ***Specification***

Applicant's amendments to the specification of 5/7/2010 have been received. The changes in the specification correct an unintentional error in the calculation of % of methyl anthranilate admixtures in the examples. Applicant has made changes and provided declaration that the calculation error was unintentional. Thus, the amendments to specification made by the applicant on 5/7/2010, fall under obvious errors and do not constitute new matter (MPEP 2163.07[R-6] II) and have been entered.

#### ***Information Disclosure Statement***

Applicant's Ids of 5/7/2010 has been entered and considered.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karri Kuenzli Bradley on June 18, 2010.

#### **The application has been amended as follows:**

Please amend claim 15 as follows:

**Claim 15.** A grape flavored post-harvest apple comprising:

a post-harvest apple that is at approximately 35°F, the post-harvest apple having a mesocarp surrounded by a pericarp, and the pericarp including an exocarp; and

an admixture, the admixture is about a 2% to about a 4% methyl anthranilate admixture having been applied to the exocarp of the post-harvest apple for a time period from about one minute to about three minutes, such that the amount of applied methyl anthranilate present in the admixture being sufficient to impart a grape flavor to the apple, and wherein the methyl anthranilate being present in the pericarp and the mesocarp of the post harvest apple, and wherein the post-harvest apple comprises a grape flavor.

Please amend claim 20 as follows:

**Claim 20.** A process for imparting grape flavoring to a post-harvest apple comprising the steps of:

providing a dip of a grape flavoring admixture, the grape flavoring admixture is about a 2% to about a 4% methyl anthranilate admixture;

dipping a post-harvest apple having an exocarp, a pericarp and a mesocarp, in the dip of the grape flavoring admixture, the post-harvest apple being whole and uncut;

allowing the apple to remain dipped in the dip of the methyl anthranilate grape flavoring admixture from about one minute to about three minutes so as to allow the methyl anthranilate grape flavoring admixture to penetrate through the pericarp and into the mesocarp of the post-harvest apple, wherein amount of methyl anthranilate present in the admixture being sufficient that a grape flavor is imparted to the post-harvest apple; and

storing the grape flavored apple at approximately 35°F.

### EXAMINER'S REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The invention as claimed recites "A grape flavored post-harvest apple comprising: a post-harvest apple that is at approximately 35°F, the post-harvest apple having a mesocarp surrounded by a pericarp, and the pericarp including an exocarp; and an admixture, the admixture of about a 2% to about a 4% methyl anthranilate having been applied to the exocarp of the post-harvest apple for a time period from about one minute to about three minutes, the applied methyl anthranilate being present in the pericarp and the mesocarp of the apple, and wherein the methyl anthranilate being sufficient to impart a grape flavor to the apple with post-harvest apple comprises a grape flavor."

The closest art of record, cited in the office action of 12/7/2009, are Weaver (US 3669684), Shillington (US 3533810), Gross (US 3071474), Klopping (US 4060625) and Apple Storage Technologies Article and hereinafter Apple Article.

Weaver teaches of imparting flavor to already existing food or food ingredient without changing the texture or essential chemical nature including fresh foods, such as, vegetables, fruits, nuts and eggs (Column 1, lines 25-31). Weaver imparts aroma or essence through air in a closed chamber (column 2, line 66 to Column 3, line 35).

Weaver does not teach

- imparting grape flavor or using methyl anthranilate to impart grape flavor
- Weaver does not teach dipping the fruit to impart flavor.

Klopping was relied upon to show that application of protective compounds by dipping to post harvest fruit prior to storage and shipment (Column 6, lines 3-5) was known.

Klopping does not teach methyl anthranilate or grape flavor and does not teach that flavor can be imparted to whole fruits by dipping in a flavoring compound.

Shillington, teaches application of an antimicrobial composition comprising 0.05 to 0.10% methyl anthranilate (Column 3, lines 65-66) to post harvest unpeeled whole fruits and vegetables by coating the surface of the whole fruit. Shillington does not teach

- of imparting a flavor, especially no grape flavor to the coated fruit



- The concentration of methyl anthranilate as disclosed (about 5-10% of the claimed concentration applicant's disclosure examples disclose the proportions and the method of calculating the concentration of methyl anthranilate admixture in about 2% to about 4%), and
- further fails to disclose the process steps of dipping from approximately 1-3 minutes being sufficient to impart grape flavor.

Gross and Arctander were relied on to provide evidence compound methyl anthranilate was known and was used as a component in artificial grape flavors.

Apple article provides evidence about typical storage conditions and time for apples. JP References in IDS of 5/7/2010 are generally directed to flavor imparted to foods, including fruits but do not provide specific details of inclusion of methyl anthranilate in recited proportion by a process as recited in the invention as claimed. Other IDS references include applied references to Gross (as discussed above) and Shillington (US3533810), already of record.

In general references cited in the search report are directed to a generic method of imparting grape flavor with no concentration of methyl anthranilate and no limitation of specific process steps as claimed.

Obviousness rejection was made for methyl anthranilate and process and storage conditions, however, applicants have amended the claims and included limitations of specific proportion of methyl anthranilate admixture applied to the apple for about one to about three minutes and stored at a specific temperature and also claimed the storage stability of the grape flavor in the stored apple (claims 20-21). Applicant's specification examples also clearly indicate the criticality of claimed proportion of methyl anthranilate admixture and the time of dipping (See examples where lower proportion of methyl anthranilate does not provide the flavor, flavor does not last as long upon storage and also where dipping for longer than three minutes caused the dipped fruit to deteriorate faster. Thus, applicant's pending claims 15, 18, 20 and 21 as amended and as

supported by way of data provided in the examples that supports the unobviousness of the invention as claimed.

Regarding the process limitations of the product claim, it is noted that applicant's amendments and remarks directed to the disclosure provided evidence that clarifies that the application of methyl anthranilate admixture for a period of about one to three minutes (i.e., process step) imparts distinctive flavor characteristics to the pericarp and mesocarp of final grape flavored apple product, i.e., the structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979). Thus, applicant's evidence renders the invention as claimed unobvious and free of prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla  
Examiner  
Art Unit 1781

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1781